

BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26

JONES PLASTIC & ENGINEERING, LLC

Employer¹

and

Case 26-RC-8242

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding², the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All production and maintenance employees employed by the Employer at its Camden, Tennessee facility including production operators, warehouse employees, material handlers, maintenance employees, mold shop repair employees, mold setters, team leaders and quality assurance technicians, **Excluding** all processors, lay-out technician, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Steelworkers of America, AFL-CIO, CLC.

ELECTION NOTICES

Your attention is directed to Section 102.30 of the Board's Rules and Regulations, which provides that the Employer must the Board's official Notice of Election at least three (3) full

working days before the day of the election, excluding Saturdays, Sundays, and holidays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 26 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **March 22, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **2** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **March 29, 2001**

Dated September 3, 2003
at Memphis, Tennessee

/S/

Ronald K. Hooks, Regional Director,
Region 26

177-8560-7000
362-6766-1050

¹ The Employer's name appears as corrected at hearing.

² The Employer and the Petitioner each filed briefs which have been duly considered. The Petitioner requested consideration of documents attached to its brief which were not a part of the official record in this proceeding. Such documents have not been considered by the Region in reaching its decision and will not be included in the official record in this proceeding.

³ The parties stipulated that the Employer, Jones Plastic & Engineering, LLC, is a Kentucky corporation, with an office and place of business in Camden, Tennessee, where it is engaged in the manufacture of plastic injection molded parts. During the last 12 months, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Tennessee. During the same period of time, the Employer sold and shipped goods and products valued in excess of \$50,000 directly to points located outside the State of Tennessee.

⁴ The Petitioner seeks to represent a unit of production and maintenance employees at the Employer's Camden, Tennessee facility. While the parties are otherwise in agreement as to the scope and composition of the unit, the Employer contends, contrary to the Petitioner, that the four quality assurance technicians are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the petitioned-for unit. The parties also disagree on the voting eligibility of about 36 or 37 laid-off employees. The Employer contends that those laid-off employees are ineligible to vote as they have no reasonable expectancy of returning to work while the Petitioner contends those employees are temporarily laid off and are eligible to vote. There are approximately 120 employees, including the laid-off employees and the quality assurance technicians, in the unit sought by the Petitioner. There are approximately 75 employees in the unit the Employer contends is appropriate.

The Employer manufactures plastic injection molded parts. In addition to the Camden, Tennessee facility involved here, the Employer also operates injection molding plants in Jeffersontown, Leitchfield, and Williamsburg, Kentucky. The Employer also has a division in Jeffersontown, called Rev-a-Shelf, which is an assembly operation manufacturer of kitchen and bath cabinets, "lazy Susans," spice racks and similar items. Primarily, the Employer manufactures component parts, such as vegetable crispers, for refrigerators and other appliances. The customers provide a mold to the Employer which uses its presses to manufacture parts as needed by the customer. No party contends that a multi-facility unit is appropriate.

Each of the Employer's plants has a plant manager who is in charge of that facility. The management staff of each plant, including the Camden facility, includes a human resources manager, some kind of production manager, a scheduler, a quality manager, and a maintenance manager. In addition, there is plant supervision, which includes the shift supervisor.

QUALITY ASSURANCE TECHNICIANS

As of the date of the hearing, each shift includes a shift supervisor, a processor, a quality assurance technician, a team leader, a warehouseman, a material handler, a maintenance tech and about 15 operators. Although the press operators and supervisors recently switched from a four-shift operation, 7 days a week, 24 hours a day, to three eight-hour shifts five days a week, the quality assurance technicians continue to work 12-hour shifts daily.

The main duties of the four quality assurance technicians at the Camden plant are to check the quality of work and ensure that quality parts are being produced. The quality assurance technicians report to the quality manager but work in conjunction with the processor and the supervisor to control production on each shift. Specifically, the supervisor usually assigns work and deals with the majority of the human resource issues. The processor is in charge of the production.

One quality assurance technician testified that typically when she arrives at work she talks to the quality assurance technician on the preceding shift and does a walk-through with them to see what presses are running and what kinds of problems and changes might occur during the shift. Then they examine the production schedule and the incoming quality assurance technician is advised of what is expected and the approximate times changes are anticipated. After the shift change, the quality assurance technician collects parts from each press. While waiting two hours for those parts to cool so they can be gauged, the quality assurance technician is on the production floor. After the parts cool, the quality assurance technician takes the parts to the gauging room and checks to see that they conform to the specifications for the part. If something is wrong with the parts, the quality assurance technician would alert the supervisor and processor of the problem. If the problem is an operator issue, such as improper trimming, the supervisor handles the matter. If the problem is with the process, such as the plastic, the processor works to correct the problem.

After gauging the first set of parts, the quality assurance technician works in assembly, preparing boxes or giving breaks to operators. A few hours later, she gauges parts again. During the shift, the quality assurance technician prepares QA notes which set forth important information obtained during the shift. Early in the shift, the quality assurance technician attends a mini-production meeting during which the supervisor discusses the production schedule, the team leader provides an approximate time for color and mold changes, and the quality assurance technician distributes copies of her QA notes to the team leader. At 7:30 a.m. the quality assurance technician attends a production meeting with the supervisor, quality manager, the manager of shop operations, the scheduler, the material manager, the maintenance manager and the plant manager. The quality assurance technician attends in order to answer questions or explain things relating to scrap.

The quality assurance technician spends from four to six hours of a 12-hour shift in the gauging room which is located in the back of the plant next to the breakroom. The room contains testing instruments and color chips as well as a telephone, a computer and a desk.

The quality assurance technicians are paid \$2 more per hour than the production operators and \$.50 more per hour than the team leaders. However, the quality assurance technicians are paid less than the processors. The quality assurance technicians receive the same benefits as the production operators, warehouse employees, and material handlers, except that production operators do not participate in the 401K plan. Quality assurance technicians clock in using the same time clock as production employees and park in the employee parking lot. Some managers park in a parking lot in the front of the facility.

Quality assurance technician positions are filled by posting the position, interviewing applicants to determine their interest in the position, and examining attendance and qualifications. Prior experience as a team leader is desirable. Once placed in the position, the quality assurance technicians receive internal and external training on such things as statistics, how to use the pen gauge, micrometers and field gauges, and repeatability and reliability studies, referred to as R and R.

The quality assurance technician may provide information which leads to discipline, but it is the supervisor who usually speaks to the production employee about disciplinary matters. The supervisor might first talk to the quality assurance technician or processor to get their opinion. If the quality assurance technician observes a problem, the technician might mention it to the employee but if the problem continued, the technician would likely notify the supervisor. The supervisor would not rely wholly on the information from the technician, but would observe the situation and then speak to the employee. On some occasions, the quality technician has been present when discipline was issued and has signed the discipline, along with the supervisor and the employee. However, the record does not establish that the quality assurance technician effectively recommended that discipline without there being an independent investigation. In fact, one quality assurance technician testified that on a couple of occasions she recommended discipline and the supervisor did not do anything. The record contains one document, signed by the supervisor, the processor and the quality assurance technician, which the human resource manager described as a recommendation to discharge an employee. Although the human resource manager testified that the employee was terminated, she acknowledged that she talked to the employee and independently investigated the matter.

Quality assurance technicians have also furnished information used in evaluations. Normally, the supervisor does the evaluation. On some occasions, the quality technician has been present for those evaluations.

Generally, the supervisor assigns work to the production operators. Quality assurance technicians occasionally assign work to operators when a supervisor is not there, such as if the supervisor is late to work. The record reflects that in such a circumstance the processor and quality technician together determined to assign the operators to the same machines they had operated the day before. However, in most instances when a supervisor will not be at work, another supervisor fills in for the supervisor who is absent.

Section 2(11) of the Act defines the term supervisor as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment”. To meet this definition, a person needs to possess only one of the specific criteria listed, or the authority to effectively recommend, *Ohio Power Co. v. NLRB*, 176 F. 2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgement. *Harborside Healthcare, Inc.*, 330 NLRB No. 191 (2000).

Section 2(11) does not include “evaluate” in its enumeration of supervisory functions. Thus, when an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor. *Harborside Healthcare, Inc.*, supra.

Based on the record here, I find the evidence is insufficient to establish the quality assurance technicians are supervisors within the meaning of Section 2(11) of the Act. See *Inland Steel Co.*, 308 NLRB 868, 881 (1992). The mere reporting of conduct which leads to discipline is insufficient to establish supervisory status where disciplinary decisions are made after independent investigation. *Brown & Root, Inc.*, 314 NLRB 19, 23 (1994).

In its brief the Employer, relying on *Harbor City Volunteer Ambulance Squad*, 318 NLRB 764 (1995), argues that the quality assurance technicians should be found to be supervisors because of their role in the evaluations of other employees. In *Harbor City Volunteer Ambulance*, both the assistant supervisors, who primarily worked with the paramedics, and the shift supervisor actually prepared an evaluation of the employee and then got together to discuss the evaluation and come up with a final percentage. Those evaluations lead to an automatic wage increase for the evaluated employee. The Board there found that the assistant supervisor played a “significant role” with respect to the annual evaluations of the employees. In contrast, the record here provides no basis for determining that the quality assurance technician plays a significant role. At most, the quality assurance technician provides “input” and is sometimes present when the employee receives the evaluation. The record does not establish how or the extent to which any input from the quality assurance technician effects an employee’s evaluation.

Since the record here does not establish the quality assurance technicians use independent judgment in making work assignments to other employees, the Employer’s reliance on *La Reina, Incorporated*, 279 NLRB 791 (1986) is also misplaced. With regard to the Employer’s reliance on attendance at supervisory meetings to establish supervisory status, in the absence of primary indicia as enumerated in Section 2(11) of the Act, secondary indicia are insufficient to establish supervisory status. *Carlisle Engineered Products*, 330 NLRB No. 189, slip op. at 3 (2000).

LAID-OFF EMPLOYEES

The Employer tries to anchor a particular customer to each of its facilities. For example, the Jeffersontown and Leitchfield plants primarily do work for General Electric appliance operations located in Louisville, Kentucky. Frigidaire is the anchor customer for the Williamsburg facility. About 40 percent of the work at the Camden plant is for a Whirlpool facility in LaVergne, Tennessee. The Camden plant also makes parts for a number of other customers including Maytag, Poulan which is a division of Frigidaire, and Porter Cable located in Jackson, Tennessee. The Employer tries to perform the work at the facility closest to the customer in order to reduce shipping costs, but it also sometimes shares work between its facilities.

The Employer currently has about 89 injection molding presses. Camden has 17 of those presses, Jeffersontown has 24, Leitchfield has 22, and Williamsburg has about 26. The Jeffersontown facility also does gas assist molding which the other facilities do not do.

Typically, the end of November through the end of December is a slow season for the Employer. Generally, beginning in mid to late January, there is a slow but steady increase in the number of presses the Employer runs. Typically, the busy season begins at the end of February and runs through September. In most years during January and February the Employer operates 55 to 60 of its 89 presses. In late February 2001, the Employer was operating about 42 of its presses.

In late November and December 2000, the Employer commenced a number of steps to reduce its expenses. Effective about December 5, 2000, approximately 50 to 60 of the approximately 130 Camden employees were laid off. Thus the Employer's records show that the number of employees working at Camden dropped from 143 on December 2, to 70 on December 9. By letter dated December 12, 2000, the Employer's corporate office sent a letter to the laid-off Camden employees stating that it had been advised the employees had been placed on indefinite layoff. Around that same time the Employer also laid off a significant number of employees at the Leitchfield facility. The number of employees at Leitchfield dropped from 282 on December 9, 2000, to 161 on December 16, 2000. In about late December, the Employer implemented wage cuts for many of the Camden employees.

By letter dated January 8, 2001, to plant managers and department heads, the Employer's CEO, Craig Jones, pointed out that the manufacturing sector of the economy had slowed significantly in the past four months and that one of the Employer's largest customers, Whirlpool Corporation, recently announced a reduction of 6,000 jobs due to declining product demand. Jones also stated that effective January 8 he was implementing a wage and hiring freeze across the board. He gave assurances that the company was fiscally strong and he was bullish about the company's future. The letter also mentioned the loss of orders from HMS and the 75 % reduction in orders from Schoeller Wavin Systems which would idle four machines. Both the HMS work and the Schoeller Wavin work were performed at the Williamsburg plant.

By December 30, 2000, many of the laid-off Camden employees had been recalled and 112 employees were working. By January 14, 2001, 121 employees were working and all the laid-off employees had been recalled, although 14 employees quit or were terminated. In addition, around the second week of January, notwithstanding the hiring freeze imposed by CEO Jones, the Employer interviewed and hired six new employees as press operators for the Camden facility. The new employees started to work between January 16th and January 24th. The Employer explained that the recall was due to the fact that when customers shut down, such as for the Christmas holidays, there is a bounce back effect so that when they return they need orders to fill their pipelines. In addition, the Employer anticipated that it would get new orders. Plant Manager Wright also testified that the new hires were attributable to a "short increase in sales" and because the scrap on the shop floor was getting out of control. He explained that he wanted to decrease the scrap by allowing the team leaders to spend less time relieving other operators and to spend more time watching the presses.

The week of January 29th, the Employer requested volunteers for a temporary lay-off. Nine employees volunteered. Then, in early February 2001, the Employer again laid off employees. Thus, only 60 employees were working on February 4, 2001, a reduction of about 61 employees from January 28.

All employees who were laid off in early February received a separation notice signed by Camden's Human Resource Manager, Sylvia Page, which showed that the layoff was temporary and the expected date of recall was March 5, 2001. In addition, the laid-off employees received a letter from the Employer's corporate benefits department dated February 14, 2001, stating the letter was "to notify you that your anticipated layoff should be less than thirty days from the effective date of your layoff depending on customers' demands." The letter then explained that upon recall if the employee could not be reached by telephone, a recall notice would be mailed to the current address on file. The letter repeated that the layoff is deemed to be temporary subject to recall within 30 days and explains that in order to continue benefits the employee is required to make payments on a weekly basis. The letter also states that if the layoff exceeded 30 days, the employee would automatically be deemed to have been placed on indefinite layoff and the employee would receive appropriate documents to continue their benefits under COBRA federal regulations. Human Resource Manager Page stated that her office provided the corporate office with the names of employees to be sent this letter.

Sometime around February 14, 2001, the Employer began examining potential savings from changing to a five-day, three-shift operation from its seven-day four-shift operation. Human Resource Manager Page testified that there would be about a \$3700 payroll savings by going to the five-day schedule. Plant Manager Wright explained that there would be savings because of the elimination of built-in overtime in the 24-hour, 7-day week schedule. On February 19, Camden Plant Manager Wright posted a notice for employees stating that effective Monday, February 26, the Employer would start operating on a three-shift basis from 8 a.m. Monday through 8 a.m. Saturday. The notice also stated that overtime would be worked as needed and that the QA and processor would continue on the existing 12-hour shifts.

However, going to the five-day schedule necessitated recalling employees from layoff. Human Resource Manager Page testified that about 19 employees were recalled from layoff in order to go to the five-day schedule. She further testified that left 36 or 37 employees in layoff status. She also stated that she intended to notify those employees by mail the day after the February 26, 2001 hearing that they were indefinitely laid off. According to the Employer's policy, in the event a participant's temporary layoff is extended beyond 30 days for any reason, the participant is eligible to continue benefits under COBRA. However, the cost of the benefits under COBRA is higher for the employee than when the employee is working or in the first 30 days of a layoff.

When asked if the employees who had not yet been recalled would be recalled in the near future, Plant Manager Wright stated he could not answer that question, he did not know. When asked if it was reasonable that the workers would be recalled in 6 months, he stated that he could not answer that. When asked if Camden could recall the remaining employees at all, he stated that it probably could not accommodate all 40, but it was fair to say that he might need 15 press operators. Plant Manager Wright testified he expected the number 10 press to be operational March 16th or 17th, and that would require three employees per shift to operate that machine. He also stated that he could not say if he would expect to call nine people back due to starting that line, because he did not know what his production requirements might be, he might lose more business and not need the employees. He further testified that there was no basis to "presume" that the employees would be recalled.

Plant Manager Wright further testified that in late December or early January, Camden had begun manufacturing some parts for Whirlpool and that after shipping some of the product, Whirlpool had notified them that they were pushing back that order from March to May. The record does not reflect the size of this order. He testified that all Whirlpool orders from LaVergne had been pushed back due to a redesign. Wright also testified that Camden's orders from Porter Cable in Jackson had been "greatly reduced". The record does not reflect the percent of work Camden previously received or currently has from Porter Cable. Wright also "estimated" that Camden has 30 percent less Poulan business than last year. Again, the record does not reflect the current or prior amount of work performed for Poulan.

Although the Employer's witnesses testified about a reduction in work for all the facilities, its staffing at Jeffersontown has remained about the same since mid-November, except the number of temporary employees has fluctuated from 4 to 28. There have been no layoffs at Jeffersontown. The Leitchfield plant had a reduction in December but since then has returned to numbers comparable to October 2000. Since January 28th, Leitchfield has had more than 20 temporary employees. The Williamsburg plant is down to about 209 employees, a slight reduction from the 220 to 230 employees employed in November 2000, but comparable to the number of employees working at that facility in early 2000. Williamsburg has had no temporary employees since about October 2000 when there was a substantial reduction in the workforce, apparently due to the loss of the HMS and Schoeller Wavin work.

The Employer's handbook provides employees have recall rights for 6 months from the last day worked, but that after 6 months an employee is no longer subject to recall and has no recall rights. The policy further provides that individuals who were employed less than ninety days at the time of lay off are not subject to recall and have no recall rights.

It is well established that temporarily laid-off employees are eligible to vote. The voting eligibility of laid-off employees depends on whether objective factors support a reasonable expectancy of recall in the near future, which establishes the temporary nature of the layoff. *Apex Paper Box Company*, 302 NLRB 67, 68 (1991). The Board examines several factors in determining voter eligibility, including the employer's past experience and future plans, the circumstances surrounding the layoff, and what the employees were told about the likelihood of recall. *Osram Sylvania, Inc.*, 325 NLRB 758, 760 (1998) quoting *Apex Paper Box*, supra.

Here, the Employer has a history of laying off and recalling employees. While the Employer described the December layoff as being indeterminate and longer than prior December layoffs, all employees were recalled as in the past. The Employer's business is competitive and is subject to being pulled and given to another company who underbids them. Typically, December is very slow and then picks up for a busy season from the end of February through September.

With regard to future plans, the Employer expects to continue making bids and trying to get work. While work orders for Camden may have slowed somewhat and some orders have been delayed, there is no evidence that Camden has experienced any substantial permanent loss of business such as occurred at Williamsburg when HMS gave the business to a competitor. In this regard, the plant manager repeatedly declined to state that he would not recall the laid-off employees, and in fact suggested that he would recall 9 to 15 employees, possibly within 3 weeks.

The circumstances regarding the February layoff also fail to support a finding that there is no reasonable expectancy of recall. Thus, within two weeks prior to the February layoff, the Employer hired 6 new employees based on some sort of sales increase. It then laid off half its work force, advising them not only that it would be temporary, but giving them an expected date of return of March 5, 2001. Given the size of the layoff and following so quickly the hiring of six employees, the record is surprisingly vague about precisely what prompted such a large layoff and why the Employer decided the day of the hearing that it did not expect to recall any more employees. While the Employer adduced considerable testimony about the number of presses or machine utilization at Camden, the record is considerably less clear about the reason for those numbers. Thus the lowest numbers were during December and February when a large number of employees were laid off.

Finally, employees were specifically told by the Employer that the February layoff would be temporary, and they would be recalled by March 5, 2001. As of the date of the hearing, employees had not been told anything to the contrary, and in fact at least 19 employees were recalled by the February 26th hearing date.

In the circumstances here, the statements made at the hearing, without supporting evidence, that employees would not be recalled are nothing more than bald assertions which, being self-serving, are not entitled to significant weight. *D. H. Farms, Co.*, 206 NLRB 111, 112 (1973). See also, *Nordam, Inc.*, 173 NLRB 1153, 1154 (1968). Rather, I find that the evidence establishes that, with the possible exception of the six employees hired in January 2001, the employees laid off in February, 2001 have a reasonable expectation of recall in the near future and are not ineligible by virtue of that layoff. Although the record establishes that under the Employer's recall policy the six new employees had no recall rights, it does not establish whether the Employer has a past practice of recalling such employees. See e.g. *Data Technology Corp.*, 281 NLRB 1005 (1986). Accordingly, I will permit those six employees to vote subject to challenge.

S & G Concrete, 274 NLRB 895 (1985), relied upon by the Employer, does not require a different result. In that case, the employer's past experience did not indicate a seasonal pattern to the layoffs and the employer had neither a policy nor a practice of recalling laid-off employees. Moreover, the employer's future plans clearly revealed no intention to hire anyone in the positions previously occupied by the two laid-off employees. One of the employees had been hired for special projects and the other was a driver whose truck was removed from the area. In that case, unlike the situation here, the *only* evidence of the temporary nature of the layoff was a statement that the employees could check back in a couple of weeks. Here, there is a past history and policy of recalls and an absence of evidence that the temporary lull in work is likely to be permanent and substantial enough to preclude recall of the employees. To the contrary, the Employer is moving into its busy season and even the plant manager acknowledged that 9 to 15 employees might be recalled, perhaps in less than three weeks.

Accordingly, based upon the foregoing, I find that, except for the six employees hired in January 2001, the employees laid off at the time of the hearing have a reasonable expectancy of recall and are eligible to vote. Those six employees will be permitted to vote under the challenged ballot procedure.

There are approximately 114-120 employees in the unit found appropriate.

CLASSIFICATION INDEX

401-2575-4250

460-5067-8400